

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 12 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0134-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
THOMAS MICHAEL PIERCE, aka)	Rule 111, Rules of
LAWRENCE LEON TAYLOR,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20582 and CR-20748 (Consolidated)

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Thomas Michael Pierce

Florence
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Thomas Pierce was convicted in 1987 in consolidated cases under the name Lawrence Leon Taylor of seventy-four counts of sexual exploitation of a minor, eight counts of sexual conduct with a minor, two counts of attempted sexual conduct with a minor, and one count of child molestation. He was sentenced to eighty-five consecutive

terms of life imprisonment. On appeal, the supreme court reversed two of his convictions, ordered six sentences to be served concurrently, and remanded the case for resentencing on two counts; the court affirmed all other convictions and sentences. *State v. Taylor*, 160 Ariz. 415, 419, 421, 423, 773 P.2d 974, 978, 980, 982 (1989).

¶2 This court denied relief in Pierce’s three prior post-conviction proceedings filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. *State v. Taylor*, Nos. 2 CA-CR 97-0608-PR; 2 CA-CR 97-0609-PR; 2 CA-CR 98-0548-PR; 2 CA-CR 98-0581-PR; and 2 CA-CR 98-0582-PR (consolidated) (memorandum decision filed June 30, 1999); *State v. Taylor*, No. 2 CA-CR 99-0507-PR (memorandum decision filed Apr. 18, 2000); *State v. Pierce*, No. 2 CA-CR 2002-0511-PR (decision order filed Aug. 12, 2004).

¶3 Pierce filed a fourth post-conviction petition in November 2005 and an amended petition in February 2006 in which he raised nine issues primarily involving his sentences. The trial court denied relief after a telephonic conference and issued a detailed minute entry shortly thereafter. We find no abuse of discretion in the court’s denial of relief. *See State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001).

¶4 As the trial court noted, Pierce argued, without citing *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), that the sentencing judge had improperly imposed aggravated sentences without the jury’s finding the existence of aggravating circumstances, had refused to consider mitigating evidence, and had improperly imposed consecutive sentences. The trial court correctly pointed out that *Blakely* is not retroactive to defendants

like Pierce whose convictions were final many years before *Blakely* was decided. *See State v. Febles*, 210 Ariz. 589, ¶ 1, 115 P.3d 629, 631 (App. 2005).

¶5 In any event, the portion of the sentencing transcript Pierce attached to his petition belies his claims; it shows the sentencing judge stated he had no discretion in imposing sentence and could not impose either aggravated or mitigated sentences. That was so because the jury found Pierce had three previous convictions for sexual offenses involving children. *Taylor*, 160 Ariz. at 418, 773 P.2d at 977. Therefore, under the version of A.R.S. § 13-604.01(F) applicable at the time Pierce committed the offenses, his sentences were required to be for life imprisonment without the possibility of release for thirty-five years. *See* 1985 Ariz. Sess. Laws, ch. 364, § 6.

¶6 The trial court also correctly found that Pierce's claims of trial error were precluded, either because they had been raised or waived on appeal or were untimely. *See* Ariz. R. Crim. P. 32.2(a)(2) and (3); Ariz. R. Crim. P. 32.4(a). Accordingly, although we grant review, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

JOHN PELANDER, Chief Judge

JOSEPH W. HOWARD, Presiding Judge